

M e m o r a n d u m

515.0260

To: Marysville – Compliance (COE)

Date: April 25, 1968

From: Tax Counsel (RHA)

Subject: Sales Between School Districts, Application of Sales and Use Tax.

You have asked whether a school district is a state agency and whether there would be use tax liability when the “T” School District sold a bus to the “C” School District.

A school district is a corporation organized for educational purposes and is a “person” in a legal sense. It is a public corporation but is not a municipal corporation. As a public corporation “of quasi-municipal character” it has been said to be a quasi-corporation of the most limited power known to the law. Yet a school district has not only powers specifically granted to it, but also such powers as may reasonably be implied.

Since the state discharges some of its governmental functions relating to education through school districts, such districts are state agencies. They are political subdivisions of the state designed for the promotion of the general educational purposes of the state. They are agencies of the state for the local operation of the state school system. They are independent and separate governmental agencies distinct from the counties or cities in which they are situated. Each school district is a separate legal entity, even where two or more districts are governed by boards composed of the same persons (43 Cal. Jur. 2d 493, 494, 495).

Attorney General Opinion 10478, 2/3/36, answered two questions as follows:

1. “Do sales of tangible personal property by one state agency to another state agency for its consumption, constitute taxable retail sales, or are such sales merely transfers between integral parts of the state as a whole?”
2. “Do sale of tangible personal property by an agency of ‘this state’ to any political subdivision thereof, for consumption by the latter, constitute taxable retail sales?”

Under the first question the Attorney General said that transactions between state agencies do not constitute taxable retail sales, since there is no transfer of title or possession involved, and the state cannot sell to itself. This is authority for finding that a sale by the Department of Employment to the Department of Agriculture is not a taxable transaction.

The answer to the second question is yes. A sale by an agency of the state to a political subdivision of the state is taxable.

A school district can be a retailer (Los Angeles City High School District v. State Board of Equalization, 71 Cal. App 2d 486).

Each school district is a separate legal entity (Smith v. Board of Education, 76 Cal. App. 2d 662).

A school district is a political subdivision of the state (Mitchell v. Hartman, 112 Cal. App. 370; Gould v. Richmond School District, 58 Cal. App. 2d 497).

A school district is a “person” in a legal sense (Miller v. Johnson, 4 Cal. 2d 265).

A sale by one school district to another school district such as you have described is, in our opinion, a taxable transaction, since there is a transfer of title from one “separate legal entity” (person) to another separate legal entity. This is much the same as where one corporation makes the sale of an automobile to another corporation. Such a transaction, if a retail sale, would be taxable even though the same person owned all of the stock in each corporation. The only avenue of exemption in this type of sale would be if the automobile constituted all or substantially all of the assets of the transferor as required under Section 6006.5(b).

While it is true that a school district is a state agency and the Dept. of Agriculture and Employment are state agencies, the latter are not separate legal entities of the state government. They are much like divisions within a corporation. The sale between one division of a corporate entity to another division of the same entity does not involve the transfer of title or possession held by the entity and would, therefore, not be a sale.

It is our opinion that the retail sale of a school bus by “T” to “C” is a taxable transaction, and the purchaser is liable for use tax upon transfer of registration of the bus.